Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/226,939	VINCENT ET AL.	
	Examiner	Art Unit	
	ANH LY	2162	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *52-59,64 and 69*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *40-51,60-63,65-68 and 70-74*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/JEAN B. FLEURANTIN/
Primary Examiner, Art Unit 2162

Continuation of 11. does NOT place the application in condition for allowance because:

The prior art of record teaches the claimed invention as indicated in the previous Office Action.

Claims 60-64 are rejected under 35 USC 101. Because the "system" in these claims is software per se. Please see the final Office action dated 06/27/2008 in the response and 101 sections.

Applicant argued that, "Caron-Colby-Shan combination fails to disclose, teach, or suggest "stopping the recursive query of the database …in the dependency information tracking array," as recited in claim 40" (starting section A in page 18 thru page 22, in the remarks).

In response to Applicant's arguments, Examiner respectfully disagrees as Caron teaches the dependency data or information is to record in the table for tracking the dependency information (col. 9, lines 65-67, col. 10, lines 1-10; also col. 7, lines, 37-48 and col. 8, lines 38-52, see figs 11-13) and SHAN teaches the stopping recursion by freeing with the operator to pose the queries (page 16, lines 121 and fig. 3).

Applicant argued that, "Caron-Colby-Shan-Laursen combination fails to disclose, teach, or suggest "for each of the one or more dependencies identified …already occurs in the graph," as recited in claimed 72" (starting section B in page 22 thru page 27, in the remarks).

In response to Appellants' arguments, Examiner respectfully disagrees as Laursen teaches directed graph and tracking arrays (col. 12, lines 35-36, lines 40-45, 52-67 and col. 13, lines 17-25).

Applicant argumed that, "it is improper for an examiner to use hindsight having read the Applicant's disclosure to arrive at an obviousness rejection." (starting section C in page 27 thru page 39, in the remarks).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, please see the Final Office action dated 06/27/2008 for the rejections of claims 41-42, 48-49, 50, 61-62, 66-67 and 70-71, 73 and 74. And in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Caron teaches teaches generating dependency code layout for the object code from a program storing on the main memory. Caron further teaches recursive method for generating dependency code. Colby teaches using SQL statement or command to query a relational database and identifying the database objects. And SHAN teaches recursive query with SQL statements to get the requested information and stopping the recursion by freeing with the operator to pose the queries. One having ordinary skill in the art would have found it motivated to utilize the use of recursive query with SQL statement on a database to obtain the requested information from a database into the system of Caron for the purpose of evaluating a recursive query of a database, thereby, enabling the user to translate a query in a form for efficient evaluation in large and complex database systems.

For the above reasons, Examiner believed that rejection of the last Office action was proper. Thus, Examiner maintains the rejections /AL/.